HOUSE BILL No. 1043

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-26.5.

Synopsis: Small business health insurance tax credit. Provides a state tax credit to small employers for qualified employee health insurance expenditures. For taxable years beginning before January 1, 2011, allows an employer to claim the credit if the employer pays at least 50% of the cost for individual or family coverage. For taxable years beginning after December 31, 2010, allows an employer to claim the credit if the employer pays at least: (1) 70% of the cost of individual coverage and 60% of the cost of family coverage, if the employer provided health insurance during at least five previous years; or (2) 50% of the cost for individual or family coverage, if the employer did not provide health insurance during at least five previous years. Provides that the credit amount equals the total amount of the qualified expenditures multiplied by a percentage that is based on the number of employees employed by the employer. Requires the department of state revenue and the small business development corporation to develop materials to inform small businesses of the availability of the credit.

Effective: January 1, 2006.

Koch

January 4, 2005, read first time and referred to Committee on Commerce, Economic Development and Small Business.

C o p y

Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1043

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3.1-26.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]:

Chapter 26.5. Small Business Health Insurance Tax Credit

Sec. 1. As used in this chapter, "compensation" means amounts described in Section 6051(a)(3) of the Internal Revenue Code.

Sec. 2. (a) As used in this chapter, "employee", with respect to any calendar year, means an individual who receives, or is expected to receive, at least five thousand dollars ($5,000) but not more than one hundred thousand dollars ($100,000) in compensation from an Indiana small employer during the calendar year. The term includes a leased employee within the meaning of Section 414(n) of the Internal Revenue Code.

(b) The term does not include a self-employed individual treated as an employee under Section 401(c) of the Internal Revenue Code.

Sec. 3. As used in this chapter, "family coverage" means health insurance coverage provided for an individual employee and one

(1) or more dependents or family members of the employee.

Sec. 4. As used in this chapter, "health insurance coverage" has the meaning set forth in Section 9832(b) of the Internal Revenue Code.

Sec. 5. (a) As used in this chapter, "Indiana small employer", with respect to any calendar year, means any person, firm, corporation, limited liability company, partnership, or association that is actively engaged in business in Indiana and that:

(1) employed an average of at least two (2) but not more than one hundred (100) employees, the majority of whom work in Indiana, on the working days of the employer during at least one (1) of the two (2) calendar years immediately preceding the calendar year in which the taxable year begins; or

(2) employs, or expects to employ, the average number of employees described in subdivision (1) on the working days of the employer during the calendar year in which the taxable year begins, if the employer did not actively engage in business in Indiana throughout the calendar year immediately preceding the calendar year in which the taxable year begins.

(b) The term may include two (2) or more companies if the companies:

(1) are affiliated companies or are eligible to file a combined tax return for purposes of state taxation; and

(2) together employ the average number of employees described in subsection (a).

Sec. 6. As used in this chapter, "individual coverage" means health insurance coverage that:

(1) is provided for an individual employee; and

(2) does not cover any dependent or family member of the employee.

Sec. 7. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 8. As used in this chapter, "qualified employee", with respect to any part of the taxable year, means an employee who does not receive:

(1) health insurance coverage under a health plan that is not provided by the Indiana small employer; or

(2) health benefits under any provision of federal, state, or

local law.

Sec. 9. (a) As used in this chapter, "qualified employee health insurance expenditure" means any amount that is paid by an Indiana small employer for health insurance coverage for an employee during the taxable year, to the extent the amount paid for the employee:

(1) is for coverage provided to the employee while the employee is a qualified employee; and

(2) does not exceed the:

(A) weighted average individual coverage expenditure for the calendar year in which the taxable year begins, if the employee is provided individual coverage; or

(B) weighted average family coverage expenditure for the calendar year in which the taxable year begins, if the employee is provided family coverage.

(b) The term does not include any amount paid or incurred for health insurance coverage under a salary reduction agreement.

Sec. 10. (a) As used in this chapter, "qualified Indiana small employer", with respect to a taxable year beginning before January 1, 2011, means an Indiana small employer that provides eligibility for health insurance coverage, after any applicable waiting period, to all qualified employees of the Indiana small employer and pays at least fifty percent (50%) of the cost of the coverage, in the case of:

(1) individual coverage; or

(2) family coverage;

during the taxable year, regardless of whether the Indiana small employer provided eligibility for health insurance coverage during any taxable year preceding the taxable year.

(b) As used in this chapter, "qualified Indiana small employer", with respect to a taxable year beginning after December 31, 2010, means an Indiana small employer that provides eligibility for health insurance coverage, after any applicable waiting period, to all qualified employees of the Indiana small employer and:

(1) pays at least:

(A) seventy percent (70%) of the cost of the coverage, in the case of individual coverage; or

(B) sixty percent (60%) of the cost of the coverage, in the case of family coverage;

during the taxable year, if the employer provided eligibility for health insurance coverage to all qualified employees during at least five (5) taxable years, regardless of whether

the years are consecutive taxable years, preceding the taxable year; or

(2) pays at least the percentage set forth in subsection (a) for individual coverage and family coverage, if the employer did not provide eligibility for health insurance coverage to all qualified employees during at least five (5) taxable years preceding the taxable year.

Sec. 11. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);

(2) IC 6-5.5 (the financial institutions tax); and

(3) IC 27-1-18-2 (insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 12. As used in this chapter, "taxable year" refers to any taxable year of an Indiana small employer in which the Indiana small employer claims the credit provided under section 17 of this chapter.

Sec. 13. As used in this chapter, "taxpayer" refers to a qualified Indiana small employer that has any state tax liability.

Sec. 14. As used in this chapter, "waiting period" has the meaning set forth in Section 9801(b)(4) of the Internal Revenue Code.

Sec. 15. As used in this chapter, "weighted average family coverage expenditure", with respect to a calendar year, means the weighted average health insurance expenditure paid by an Indiana small employer for all qualified employees enrolled for family coverage in all health plans offered by the employer during the calendar year, with each plan weighted according to the number of qualified employees who are enrolled, or will be enrolled, in the plan on January 1 of the calendar year.

Sec. 16. As used in this chapter, "weighted average individual coverage expenditure", with respect to a calendar year, means the weighted average health insurance expenditure paid by an Indiana small employer for all qualified employees enrolled for individual coverage in all health plans offered by the employer during the calendar year, with each plan weighted according to the number of qualified employees who are enrolled, or will be enrolled, in the plan on January 1 of the calendar year.

Sec. 17. (a) Except as provided in subsection (c), a taxpayer that makes a qualified employee health insurance expenditure in a

taxable year is entitled to a credit against the taxpayer's state tax liability for the taxable year. Except as provided in subsection (b), the amount of the credit equals the total amount of the taxpayer's qualified employee health insurance expenditures for the taxable year, multiplied by one (1) of the following percentages:

(1) Fifty percent (50%), in the case of a taxpayer that has at least two (2) employees, but not more than twenty-five (25) employees.

(2) Forty percent (40%), in the case of a taxpayer that has at least twenty-six (26) employees, but not more than thirty-five (35) employees.

(3) Thirty percent (30%), in the case of a taxpayer that has at least thirty-six (36) employees, but not more than fifty (50) employees.

(4) Twenty percent (20%), in the case of a taxpayer that has at least fifty-one (51) employees, but not more than seventy-five (75) employees.

(5) Ten percent (10%), in the case of a taxpayer that has at least seventy-six (76) employees, but not more than one hundred (100) employees.

(b) Subject to the limitation set forth in section 9(a)(2) of this chapter, if the taxpayer otherwise pays one hundred percent (100%) of the total costs of providing health insurance coverage to all of the taxpayer's qualified employees during the taxable year, the amount of the credit under this section equals:

(1) the total amount of the taxpayer's qualified employee health insurance expenditures for the taxable year; multiplied by

(2) the applicable percentage under subsection (a) plus five percent (5%).

(c) A taxpayer may not claim the credit under this section for any qualified employee health care expenditure for which the taxpayer claims another credit or a deduction under this article.

Sec. 18. (a) If the amount of the credit determined under section 17 of this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the taxpayer's succeeding taxable years. Each time that the credit is carried over to a succeeding taxable year, the credit is to be reduced by the amount that was used as a credit during the immediately preceding taxable year.

(b) A credit earned by a taxpayer in a particular taxable year shall be applied against the taxpayer's state tax liability for that

taxable year before any credit carryover is applied against that liability under subsection (a).

(c) A taxpayer is not entitled to any carryback or refund of any unused credit.

Sec. 19. (a) If a pass through entity is entitled to a credit under section 17 of this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same qualified employee health insurance expenditure.

Sec. 20. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether an expenditure is a qualified employee health insurance expenditure.

Sec. 21. The department shall, in conjunction with the Indiana small business development corporation (established under IC 4-3-12-1), develop informational materials to ensure that Indiana small employers are aware of:

(1) the eligibility criteria for the credit provided under this chapter;

(2) the methods used in calculating the credit; and

(3) the documentation required to claim the credit.

SECTION 2. [EFFECTIVE JANUARY 1, 2006] **IC 6-3.1-26.5, as added by this act, applies to taxable years beginning after December 31, 2005.**